IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1131 OF 2005
IN
NOTICE OF MOTION NO.2493 OF 2004
IN
SUIT NO.1518 OF 2002

The Board of Trustees of the
Port of Mumbai .. Appellant

v/s.

M/s.V.V.F. Limited .. Respondent

Mr.U.J.Makhija i/by M/s.Mulla & Mulla for the appellant.

Mr.M.P.S.Rao i/by M/s.Pardiwala & Co. for the respondent.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 13th December, 2005

P.C.

Heard.

2. Admit.

3. M/s.Pardiwala & Co. waives service for the

respondent.

4. Appeal is heard finally at this stage.

5. The learned motion Judge has granted interim order in terms of prayer clause (a)(i) subject to the conditions set out therein. We are of the view that the interim order in terms of prayer clause (a)(i) could have been justified only if

the learned motion Judge found some prima facie case in favour of the plaintiff. The impugned order does not reflect so. There is no consideration of the prima facie case. The impugned order also does not reflect consideration of other relevant aspects that may justify grant of temporary injunction in terms of prayer clause (a)(i). In our view in the very nature of the suit that has been filed by the plaintiff, the question of consideration of the sale of the plot in question in favour of the plaintiff does not arise. The whole approach of the learned motion Judge in consideration of the matter is not proper.

6. The learned counsel for the parties agree that the order dated 8th July, 2005 impugned in the present appeal may be set aside without prejudice to the contentions of the parties that may be raised in support or opposition to the notice of motion.

7. We, accordingly, allow the appeal and set aside the order dated 8th July, 2005. Notice of motion No.2493 of 2004 is restored to file. Until disposal of the notice of motion, the ad-interim order dated 2nd May, 2002 shall remain operative.

8. We direct the defendant -appellant to refund

the sum of Rs.29,00,000/- to the plaintiff -respondent immediately and in no case later than one week from today.

No costs.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)